

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Wireline Competition Bureau Seeks Comment on |) | WC Docket No. 10-90 |
| Areas Shown as Unserved on the National |) | |
| Broadband Map for Connect America Fund |) | |
| Phase I Incremental Support |) | |

To: Chief, Wireline Competition Bureau

**EMERGENCY PETITION FOR RECONSIDERATION OR,
ALTERNATIVELY, FOR AN EXTENSION OF TIME**

The Wireless Internet Service Providers Association (“WISPA”) hereby requests reconsideration of the Public Notice (“*Public Notice*”) the Wireline Competition Bureau (“Bureau”) released in this proceeding on December 5, 2012.¹ First, the Bureau has embarked on an information collection process that is *ultra vires* – it has not been approved by the full Commission following required notice-and-comment procedures. Second, the *Public Notice* is unduly burdensome and subject to imminent obsolescence. It requires fixed broadband providers to review the accuracy of the December 2011 National Broadband Map (“NBM”) when, according to information provided by the Commission’s Geographic Information Officer, release of the updated and more accurate June 2012 version of the NBM is expected in January 2013. If the Bureau does not rescind the *Public Notice*, it should afford parties an indefinite extension of time until final rules are effective and the updated NBM is available.

¹ *Public Notice*, “Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Fund Phase I Incremental Support,” DA 12-1961 (rel. Dec. 5, 2012) (“*Public Notice*”). The Bureau released a subsequent Public Notice providing updated information and extending the deadlines for the filing of Comments and Reply Comments. See *Public Notice*, “Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List,” DA 12-2001 (rel. Dec. 10, 2012) (“*Update Public Notice*”). The new deadline for Comments is January 9, 2013 and the new deadline for Reply Comments is January 24, 2013.

The *Update Public Notice* requires broadband providers to review the NBM and submit Comments by January 9, 2013. Because grant of this petition would delay the filing of Comments by that date, and potentially preclude their filing at all, thereby eliminating the time and effort involved in submitting, reviewing and considering Comments and Reply Comments, WISPA respectfully requests that the Bureau act expeditiously.

Discussion

I. THE BUREAU LACKS AUTHORITY TO ADOPT A “LIMITED CHALLENGE” PROCESS.

In a Further Notice of Proposed Rulemaking released on November 19, 2012 (“*FNPRM*”),² the Commission proposed rules for the disposition of approximately \$185 million in declined Connect America Fund (“CAF”) Phase I subsidies. Among the rules the Commission proposed is a so-called “limited challenge process” that would allow fixed broadband providers to review and comment on the coverage depicted on the NBM to determine whether and to what extent the NBM may overstate or understate their existing coverage.³ The Commission requested comment “as to whether this is a workable approach that can be implemented quickly so that a finalized list of eligible census blocks would become available shortly after adoption of the revised rules under consideration in this *FNPRM*.”⁴ The Commission ordered the Bureau to publish a list of eligible census blocks within 15 days of the release of the *FNPRM*.⁵ Significantly, the *FNPRM* has *not* been published in the Federal Register, the public comment process has *not* commenced, and the Commission has *not* adopted

² *In the Matter of Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (rel. Nov. 19, 2012) (“*FNPRM*”).

³ *See id.* at 4-5.

⁴ *Id.* at 5.

⁵ *Id.*

rules implementing the “limited challenge process” or any other proposal described in the *FNPRM*.

On December 5, 2012, the Bureau released the *Public Notice* and provided a link to its list of “potentially unserved census blocks in price cap territories.”⁶ The *Public Notice* provided details on what information the Bureau was seeking to help it determine whether and to what extent the NBM accurately depicts fixed broadband coverage. The *Update Public Notice* updated the list of “potentially unserved census blocks” and extended the Comment deadline to January 9, 2013 and the Reply Comment deadline to January 24, 2013.⁷ The Bureau indicated that it is “relying on the currently published version of the NBM, which is based on data as of December 2011.”⁸ The Bureau acknowledged that “there may be subsequent updates that commenters have already relayed to their state mapping entities (*e.g.*, a census block was unserved in 2011, but has since become served).”⁹

From WISPA’s perspective, it appears that the process described in the *Public Notice* is actually the “limited challenge process” envisioned by the proposed rules, but for which there has been no public input and certainly no final rules. Moreover, the Commission has not adopted any standard by which the Bureau should consider the Comments and the Reply Comments. Although it has proposed to allow the Bureau to change the designation of a census block when it is “more probable than not” that the NBM is inaccurate,¹⁰ the Commission has developed no record in regard to the *FNPRM* and thus has not been presented with alternative proposals. In essence, the Commission and the Bureau have put the proverbial cart before the horse and

⁶ *Public Notice* at 1.

⁷ *Update Public Notice* at 1.

⁸ *Public Notice* at 2, n.2 (emphasis added).

⁹ *Id.*

¹⁰ *FNPRM* at 5.

prejudiced the outcome of the notice-and-comment process described in the *FNPRM* and required by the Administrative Procedure Act (“APA”).¹¹

Although the Bureau may have the authority to collect information regarding the NBM, it has no delegated authority at this time to implement a “limited challenge process” that presumably would be used to determine the areas where CAF funds may be used, and it has no standard by which it should review public submissions. Accordingly, the Bureau should reconsider and rescind the *Public Notice* until the full Commission considers public input and rules for the “limited challenge process” in the context of the *FNPRM*.¹² Alternatively, the Bureau should extend the time for the filing of Comments and Reply Comments until final rules are effective and the updated NBM is available for public consideration.

II. THE INFORMATION SOUGHT BY THE *PUBLIC NOTICE* SOON WILL BE SUPERSEDED BY AN UPDATED NBM.

In addition to the procedural infirmities associated with the *Public Notice*, there is no reason for the Bureau to move so hastily to collect the mapping information. According to Michael Byrne, the Commission’s Geographic Information Officer, the National Telecommunications and Information Administration (“NTIA”) plans to release the June 2012 updated version of the NBM in January 2013, the same month the Bureau is also requiring parties to submit Comments and Reply Comments on the December 2011 version of the NBM. As suggested in the *Public Notice*, the NBM to be made available next month will contain updated information on new broadband deployments and corrections to the earlier version. Given these circumstances, requiring the public to research and submit information on a soon-to-be outdated version of the NBM creates an unnecessary exercise, both for broadband providers

¹¹ Administrative Procedure Act, 5 U.S.C §553(c).

¹² WISPA plans to participate in the *FNPRM* proceeding. WISPA has previously opposed challenges to the NBM raised by price cap carriers in their waiver petitions.

and Bureau staff that would need to review and consider the information contained in the Comments and Reply Comments. A far better way to proceed – one that would also be compliant with the APA – would be to invite on the accuracy of the NBM *after* rules are adopted and *after* the updated version of the NBM is released.

Under NTIA rules, mapping data is updated semi-annually as of June 30 and December 31 of each calendar year.¹³ For the June 30, 2012 version of the NBM (Round 6), state mapping contractors were required to provide information to the NTIA by September 30, 2012.¹⁴ NTIA then standardizes the data submitted by the various contractors, merges the information and makes the new NBM available to the public. This process generally takes a few months. Based on information Mr. Byrne provided by telephone to undersigned counsel, which was corroborated by NTIA in a telephone conversation with the mapping contractor for the Partnership for a Connected Illinois, the June 30, 2012 version of the NBM should be publicly available in January, 2013.

Given this, it makes little sense to require WISPs, price cap carriers, cable companies, DSL providers and other providers of fixed broadband services to update an NBM that will be superseded and obsolete *at the same time broadband providers are responding to the Public Notice*. Coupled with the fact that the Bureau lacks authority to impose the “limited challenge process” on broadband providers, the process adopted in the *Public Notice* should be rescinded or, at a minimum, delayed. The Commission ultimately may decide not to adopt a challenge process, in which case the entire information collection process will have been for naught.

¹³ *Notice of Funds Availability and Solicitation of Applications*, State Broadband Data and Development Grant Program, 74 Fed. Reg. 32545 (July 8, 2009), at, 32552 n.26.

¹⁴ *Id.*

III. THE BUREAU MUST ACT ON THIS PETITION IN AN EXPEDITIOUS MANNER.

The deadline for filing initial Comments in this proceeding is January 9, just a few short weeks away. Broadband providers are in the process of attempting to comply with the procedures described in the *Public Notice*, even in the absence of definitive standards and with release of the updated NBM imminent. This involves a relatively time-consuming review of the NBM data, assembling necessary information and preparing any Comments to the best of their ability. So that broadband providers can avoid the unnecessary exercise involved in this process, WISPA respectfully requests that the Bureau grant this petition expeditiously.

Conclusion

The Bureau lacks authority to impose information collection burdens on fixed broadband providers at this time. Even if it had such authority, there is no urgency to require fixed broadband providers to submit information on January 9 when, according to Commission and NTIA mapping officials, the NBM is expected to be updated in the same time frame that the Bureau is collecting data on the earlier version of the NBM. Accordingly, the Bureau should expeditiously reconsider and rescind the *Public Notice* and the *Update Public Notice* until it receives authority to commence a “limited challenge process” and an updated NBM is available.

Instead of rescinding the *Public Notice*, the Bureau could wait until after final rules are effective and the updated NBM is available before requiring Comments and Reply Comments.

Respectfully submitted,

December 21, 2012

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: */s/ Elizabeth Bowles, President*
/s/ Matt Larsen, FCC Committee Chair

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